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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,993	03/12/2004	Peter T. Barrett	MS1-1795US	6870
22801	7590	12/03/2008		
LEE & HAYES PLLC 601 W Riverside Avenue Suite 1400 SPOKANE, WA 99201			EXAMINER	
			HOANG, THAI D	
			ART UNIT	PAPER NUMBER
			2416	
			MAIL DATE	DELIVERY MODE
			12/03/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/798,993

**Applicant(s)**

BARRETT ET AL.

**Examiner**

THAI D. HOANG

**Art Unit**

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) 13-27 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 28-34 is/are rejected.  
7) ☒ Claim(s) 1-12 and 35-40 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 5/19/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of group I in the reply filed on 08/08/2008 is acknowledged.

### ***Claim Objections***

Claims 1-12 and 35-40 are objected to because of the following informalities:

The recitation "capable of" and/or "adapted to" in claims 1 (lines 6, 8 and 10), 2 (line 2), 3 (line 1), 4 and 6-8 (lines 2), 35 (lines 5-6), 36 (line 2), 39 (line 3) and 40 (line 6) is not a positive limitation but only requires the ability to so perform. Therefore, it does not limit a claim to a particular structure and does not limit the scope of a claim or claim limitation. See MPEP 2111.04.

Claims 2-12 and 36-40 are objected because they depend on objected claim 1 and 35 respectively.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 28-34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 5 recited **“An arrangement for a scheduling scheme to facilitate the distributed sending of media data”** which is functional descriptive material. It does not fall within one of the four statutory classes consisting of a process, a machine, a manufacture, and a composition of matter. Specifically, the claim is not a process because it does not define a series of steps. See MPEP 2106(IV.B.2.b). In addition, the claim is not a machine, a manufacture, or a composition of matter since the claim has no physical structure. See MPEP 2106(IV.B.2.a). As such, the claim is not statutory subject matter.

Claims 29-34 are rejected because they depend on rejected claim 28.

#### ***Allowable Subject Matter***

Claims 1-12 and 35-40 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chandrasekaran et al, US Pat. No. 6970872 B1, *“Techniques for reducing latency in a multi-node system when obtaining a resource that does not reside in cache.”*

Vahalia et al, US Pat. No. 6973455 B1, *“File server system providing direct data sharing between clients with a server acting as an arbiter and coordinator.”*

Dunn et al, US Pat. No. 7167934 B1, "*Peripheral device data transfer protocol.*"

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THAI D. HOANG whose telephone number is (571)272-3184. The examiner can normally be reached on Monday-Friday 10:30am-19:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Thai D Hoang/  
Primary Examiner, Art Unit 2416*